

**Brownfields Study Group Meeting  
Final Meeting Notes  
July 21, 2000  
Room 041, GEF3, Madison**

**Attendees**

Kendra Bonderud  
Brian Borofka  
Eric Ebersberger  
Darsi Foss  
Nancy Frank  
Judie Gibbon  
Mark Giesfeldt  
Jeff Gohlke  
Art Harrington  
Noelle Hatleberg  
Julie Keal  
Vanessa Kuehner  
Peggy Lescrenier  
Lee Madden  
Percy Mather  
Doug Meinhardt  
Jessica Milz  
Tom Mueller

Mike Naranjo  
Henry Nehls-Lowe  
David Pluymers  
Michael Prager  
Joe Renville  
Michael Sachen  
Pam Schaefer  
Dave Schmiedicke  
Jason Scott  
Patrick Stevens  
John Stibal  
John Stricker  
Pat Sullivan  
Anna Thomas  
Valarie Thomas  
Sam Tobias  
Marc Weinberger  
Manyee Wong

The purpose of this meeting of the Brownfields Study Group is to go over each issue from the draft subcommittee write-ups. These draft write-ups were sent out in an email by Jessica Milz on July 19. If you need copies of these drafts, please contact Jessica at 608-267-0559 or by email at milzj@dnr.state.wi.us.

**Study Group Timeline:** (Contact Jessica Milz if you would like a written copy.)

A final draft of the issue write-ups will be sent by email to the Study Group by September 1. Editorial comments or draft dissenting opinions should be sent to the DNR by September 15.

**1. LOCAL GOVERNMENT ISSUES**

✓ **ER TIF:**

Concerns over the inclusion of public infrastructure and how it would be used. Will be sent back to the LG Subcommittee for resolution.

This report should include DOR's technical changes, which the committee has. These technical changes will be added to the ER TIF write up.

✓ **LGU Negotiation and Cost Recovery Process:**

Overview of where separate committee is on this issue. The report to the Legislature will be a separate report. It will only be recognized by the Study Group Report.

✓ **Tracking Implementation of Budget Items:**

No changes were made.

✓ **Negotiated Sale in Lieu of Bidding:**

Marc Weinberger will be adding modifications to this language. This applies only to County property that they are selling. Issue is that the City may have special assessments and the County may not be negotiating for the City on those costs. Need to fix this, so that the City has notice and some role. This issue will be discussed at next LGU Subcommittee. Marc Weinberger and Sam Tobias will work together to come up with language to take care of City concern.

✓ **Assigning Judgement of a Tax Deed Without Taking Title:**

No changes were made.

✓ **Smart Growth:**

(will be discussed at next LGU Subcommittee – tentatively set for August 2 in the am, will send out email notice to confirm this meeting)

✓ **Modify Expenditure Restraint Exemption for Municipalities:**

Pat Stevens mentioned that WMC objected in the past. Does not support exceptions to the authority. There are currently other exceptions to the restraint authority.

✓ **Clarify Access and Inspection Authority for Local Units of Government and Clarify Blight Elimination and Slum Clearance Authority**

Mike Sachen went over the proposal, which was put together by Sub-sub committee, approved by the LGU Subcommittee, and moved to the main Study Group. Make sure statutory changes are included in final report. Pat Stevens will get comments to DNR by mid-August.

✓ **DOR Assessment Valuation Process:**

John Robinson mentioned the Mayor of Kenosha's concerns that this "clarification" may result in more mothballed properties. Group understood this, but felt the benefits were greater than any perceived downsides.

John Robinson clarified that it's more the trigger mechanism that is being re-examined, not the way that DOR does the valuations. Language between abandoned and utilized properties may need to be clarified, will re-examine at meeting August 2.

✓ **Contamination in the Right of Way:**

To be discussed at the August 2 meeting.

Concern over impacts to ROWs and leaving residual levels of soil contamination in place on roadways.

Mark Giesfeldt, DNR, clarified that the GIS rule is going out for public comment and that the DNR will be accepting comments, and more importantly working with interested parties.

John Stibal concern is over the cost of handling that soil contamination if it has to be excavated for any reason. The future cost issue is the key of most local governments. Who pays for management of this material?

✓ **Letters to Kettl Commission and Governor's TIF Working Group:**

A letter will be sent to Kettl commission on the working relationship between governments. Robinson will draft letter and share with group prior to sending it in final. No letter will be sent to the Governor's TIF Working Group but the Study Group will monitor progress of that effort.

✓ **Privacy Act: Wisconsin Act 88:**

To be discussed at August 2 meeting, as to how it will impact DNR and Commerce's data bases and the availability of that info on the Web.

✓ **LGU Exemption:**

If a new discharge occurred at a property and how it would impact the overall exemption for the property? The group wants to make sure that the LGU responds to a discharge that it caused, but that the LGU would not lose the exemption for the pre-existing discharges on the property.

Art Harrington explained that this issue was discussed by the liability subgroup. At that meeting, the group felt comfortable with the comments from DNR Legal Services that a LGU would not lose the exemption if they cause a new discharge and that they would only be responsible for cleanup of that discharge, not the entire property. The subgroup also discussed that a LGU can lose the exemption for a discharge that is exacerbated by a action of the LGU and that the DNR was planning to issue guidance to staff and LGUs to clarify this issue and to help make sure that LGUs maintain their exemption.

Recommendation: Get DNR legal opinion no later than September 1, to share with group.

## **2. LIABILITY ISSUES**

### ✓ **Interim liability protection:**

Private insurers came to liability subcommittee, and the group felt that there is a better private solution and that the public solution is no longer needed.

### ✓ **Waste regulations and brownfields redevelopment:**

Want a schedule from the Waste program on how and when they will finalize this effort. Reiterate what is envisioned as far as work products and schedule.

### ✓ **Liability Exemption for Local Governments:**

Include LGU exemption for solid waste to mirror the LGU exemption in the spill law. Subgroup will work with the Waste program to resolve any issues regarding the applicability of this proposed exemption.

### ✓ **Private cost recovery and cause of action:**

Committee also discussed the issue of injunctive relief, like the RCRA citizens' suit, to compel a person to act rather than have the ability to recover the cost.

There was discussion regarding whether, under the proposal, the local government would do the cleanup and the new owner would pursue the cost recovery or whether the local government could assign the right to do the cleanup as well as the right to pursue cost recovery. Are you assigning the right to recover costs or does the person incurring the costs have to be the one who recovers? Allow this to apply to the private developer who comes in and does cleanup. The LGU need not be the only one incurring costs to be recovered.

Follow-up: need to further refine this recommendation. Will set up meeting/conference call to get more feedback and more detail to the proposal.

### ✓ **Use of DNR's enforcement discretion as it relates to brownfields:**

The subgroup was happy with DNR's approach to this issue.

### ✓ **Liability issues related to sediment contamination:**

This is a complex issue. Bullet #1 is referred to a subcommittee. Someone at Art's law firm was going to do some research on this area of property law. Adopt bullet #2 and 3.

Art will put together draft statutory language modifying s. 292.13, Stats., to include sediments, as well as the cross-references in s. 292.15, Stats.

✓ **Environmental Insurance:**

Group agreed it should be in the report.

✓ **Sovereign Immunity – Ability of Private Parties to Enter into Agreements with the DNR and the Ability for Private Parties to Enforce those Agreements.**

Group said this should be put on hold (out of report) for now. Follow up with person recommending this to see if this is needed for brownfields given that the DNR has entered into very few of these negotiated agreements.

✓ **Off-site exemption and VPLE**

Agree to proposal.

✓ **VPLE – Assigning of Certificates of Completion and Responsibility for Maintenance and Monitoring**

Agree to proposal.

### **3. Miscellaneous Updates**

✓ **Solid Waste Streamlining Presentation:**

Gene Mitchell (DNR Waste Program) and Mark Gordon (DNR Remediation and Redevelopment)

If a site is going through NR700 process, the exemption would be issued as part of the cleanup process.

Where there is no NR 700 process, then the expedited process would apply.

Gene handed out the application for this expedited process. It is draft and the DNR is looking for comments. DNR will not be looking at these and they will be filed.

Proposes that there be a deed affidavit that there is solid waste there.

Group raised a number of concerns over the requirement for the deed notice on every property.

Get comments to Gene in 3 weeks. [Mitchg@dnr.state.wi.us](mailto:Mitchg@dnr.state.wi.us) or 608 275 3466.

✓ **Hazardous Waste Update:**

Mark Gordon gave an update. Met with Region V hazardous waste staff, managers and attorneys.

**4. FINANCIAL INCENTIVES RECOMMENDATIONS**

✓ **Permanent funding and expansion of the brownfields grant program**

Commerce perspective: John Stricker does not believe that there is a need for money for non-economic projects. John gave a summary of the \$2.6 million in grant money they believe they have spent on 5 “non-economic” projects.

Gave money to Mauston public library and a number of housing projects.

The “cleanup projects at sites with non-economic impact” issue will be kept as a bookmark and group will see what the new Commerce system will look like. They are planning to include greater flexibility in their current process. Commerce will get the new scoring criteria for round 4 of the grants to the BF Study Group by the end of August.

Group agrees to change issue description from “non-economic” to “indirect”.

Tom Mueller recommends that the Brownfields Study Group be able to review grant program changes in the future, given their relevance to the issue of brownfields.

✓ **Gaming Revenue Money:**

Will be making minor changes to the eligible costs, based on Financial subgroup’s recommendations. We are awaiting a letter of support from the Potawatomi tribe.

Dave Schmiedecke wants groups to be aware that this money is already funding existing programs. Those programs would need to be funded by other unknown sources. Need to put this in the background section of the report.

✓ **Site Assessment Grant:**

John Stricker has concerns over giving more money to a program that has not operated yet and has no history.

Jessica Milz added that since the first round of grant applications are due in August 1, the Financial Incentives Subcommittee had asked that the information from the applications be added into the report.

Brian Borofka recommends that we be definitive on the number of staff that the Bureau of Community Financial Assistance needs.

✓ **Modify the Development Zone Tax Credits:**

Marc Weinberger says that DOR will oppose because:

- Tax credits are not a commodity to be sold or transferred
- Difficult to administer, because it may go to someone who is not eligible & they will need to recover money from some innocent parties
- Will not result in additional cleanups

Tom Mueller – if we want tax incentives we need to make them useable. Right now, no one is using them.

John Stibal – I would disagree with Marc, tax credits are a commodity.

Peggy Lescriner—opposed to deleting job component of tax credit.

✓ **Funding for Brownfields Incentives**

Important to keep the health of the Environmental Fund, given the need to keep the Brownfields grant going, DNR cleanups and existing Commerce and DNR staff available to assist in the cleanup and development of brownfields. Create a new separate issue for the Environmental Fund.

**5. Role of Ombudsperson at Commerce**

John Robinson – Issue brought up at John and Bruce Keyes' behest. John thinks that the Ombudsperson should be a more neutral position in promoting the resolution of brownfields issues, both inter- and intra-departmental. This doesn't mean that Commerce should lose staff. This position should act as advocate for the whole Brownfields Initiative.

John Stibal – Doesn't see need for changing position at this time. Believes it should remain at Commerce and allow staff to promote the program and resolve issues. Everyone should be an advocate of brownfields.

Lescriner – agencies working together is the best way to get this going.

Borofka – what is status of job and can we address this issue this way?

Lescriner – job is being announced at the beginning of August

Robinson – No one is disputing that Jackie Jarvis did an excellent job in setting up the Grant program. He believes the Ombudsperson to be the facilitator for resolving issues, streamlining projects and coordinating resources more than being the public relations person for brownfields.